Peru's New President Delivers on Promised Tax on Mining Interests

October 2011

The government of Peru's new president, Ollanta Humala, who assumed office July 28, 2011, has reached an agreement with the country's mining companies to impose a new tax on companies' net profits. This tax is expected to raise approximately US$1.1 billion (approximately 3 billion *soles*) in new revenue for spending on social programs. The new tax fulfills a central platform of President Humala's campaign to establish a windfall profits tax on mining interests operating in Peru.

Even though Peru's government has not offered details regarding the nature, scope or applicable rate of the new tax, it is likely that the new imposition will not be enacted in the form of a "windfall tax," but by means of an amendment to the current mining royalty regime. Peru's government has also suggested that the new tax will be imposed on the companies' net profits, and will not be based on sales volume or similar indicators that are currently used to calculate the tax on mining royalties. President Humala also recently indicated that he did not expect to seek any additional revenues from Peru's mining interests beyond this new tax.

The current mining royalty regime, passed by Act No. 28258, establishes an obligation on Peru's mining companies to pay an annual royalty based on a percentage over the "transfer price" (mineral concentrated value), determined in accordance with its international quotation, as follows:

- 1 percent of the mineral concentrated value up to US$60 million

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- 2 percent of the mineral concentrated value between US$60 million and US$120 million
- 3 percent of the mineral concentrated value of more than US$120 million

Peru's government has not yet announced when the new tax would take effect. Legislation implementing the new tax remains to be enacted by the Peruvian Congress.

Squire Sanders' global market access group has deep experience dealing with these types of restrictions within many industries including mining. If you are affected by these restrictions, please contact Shanker A. Singham, leader of the market access/WTO group, or Iván Chu of Squire Sanders Legal Counsel Worldwide Network firm Rebaza, Alcázar & De Las Casas in Peru. In addition, we have been advising clients throughout the global metals, mining and natural resources sector for more than 100 years. We possess particular depth in the issues confronting these industries and our clients include one of the world's largest copper mining companies, the world's largest steelmaker and the world's leading cobalt producer.

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